#### **BEFORE THE**

# NATIONAL LABOR RELATIONS BOARD

# **REGION 13**

In the Matter of:

Cook County School Bus, Inc. :

Employer, : Case No. 13-UD-79769

:

and

Nathaniel Matthews :

Petitioner

and :

•

INTERNATIONAL BROTHERHOOD OF

TEAMSTERS, LOCAL UNION NO. 777, :

Union :

# UNION'S EXCEPTIONS TO HEARING OFFICER'S REPORT ON OBJECTIONS:

# POSITION OF THE UNION

The Union respectfully disagrees with the Hearing Officer's recommendation to sustain the Employer's second objection and fourth objection as it relates to Objection 2. The Objections should be overruled and the results should be certified by the National Labor Relations Board.

# Objection 2

The Union appeals the Hearing Officer's decision to sustain the ruling on Objection 2 which claims,

"During the post- petition period, Local 777, by its agents, threatened and restrained employees in their right to vote in the election in order to prevent a majority of the unit from voting to deauthorize. Such conduct included references to employees who decided to vote as "troublemakers" and statements that the union would know who the voters were and would deal with them later."

As argued previously in the Union's brief, *Westwood Horizon Hotel 270 NLRB 802*, *803* includes a 5 point test to determine whether "the misconduct was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." The test includes 1) the nature of the threat itself 2.) whether the threat encompassed the entire bargaining unit 3) whether reports of the threat were disseminated widely within the unit 4) whether the person making the threat was capable of carrying it out, and whether it is likely that the employees acted in fear of his capability of carrying out the threat, and 5) whether the threat was rejuvenated at or near the time of the election.

First, the Union and its Agents deny threatening any employees with job loss. The comments made by Bob Hollenbach and Greg Glimco were only made to inform the eligible voting unit of the difference between this vote and a representation election. The voting unit was told that not participating in the vote is the same as voting "no". This is a fact and not a threat. The five witnesses that testified against Bob also testified that they participated in the election. Reneta Kic not only admitted that she participated in the election but also testified that she had signed the petition. This contradicts the position that she was in fear for her job or repercussions from the Union. If there was such a "severity" to these claims, Reneta and the other witnesses would not have expressed their views to Bob so openly if they felt their free choice was being compromised.

Neither the Union nor its agents have any authority over the tenure of the employees at Cook County School Bus. The Collective Bargaining Agreement between Cook County School Bus Inc. and Local 777 gives management the right: "to direct and supervise the work of its drivers: to hire, promote, or demote, transfer, and suspend and discipline or discharge drivers for just cause, to plan, direct and control

operation, to layoff drivers because of lack of work or for other legitimate reasons in accordance with provisions herein; to introduce new methods or facilities up[on notification of the Union; to schedule the hours of work and assignment of duties in accordance with driver's seniority". All of the members are aware of this and there is no merit in the claim that Bob threatened the witnesses position nor would the Union attempt to do such.

#### Objection 4

The Employer's fourth objection contends that:

[B]y the above and other objectionable conduct, the laboratory conditions required by the Board in elections were breached.

This objection is tantamount to a catch-all allegation and should be overruled to the extent of the rational for overruling Objection 2.

#### Conclusion

The Union argues Bob's conduct was not sufficient to set aside the election and that his statements did not improperly interfere with the employees' free choice of participating in the election. Bob's comment that "not voting would be counted essentially as a no vote" was simply stating the facts of the election. Bob was exercising his fundamental right to freedom of speech, and his comments did not reasonably intend to interfere with the election. In addition, Reneta Kic did vote during the election even though she claims Bob threatened her. Bob's comment, again did not intend to interfere with employees' free choice and his comments did not reasonably intend to interfere with the election. This is evident as all witnesses who testified did in fact vote. The Union agrees with the Board's ruling that Objections 1 and 3 are overruled. Additionally, the Union believes that the Employer's Objections 2 and 4 should be overruled and respectfully requests that the results of the election be certified.

Respectfully Submitted,

Gregory Glimco

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Submitted: September 7, 2012

#### STATEMENT OF SERVICE

The brief was served electronically on this 7<sup>th</sup> day of September, 2012

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The brief was served by regular post -mail on this 7<sup>th</sup> day of September, 2012

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